

08-20-2002

EXITS

TTAB

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IN THE MATTER OF TRADEMARK REGISTRATION NO. 2,372,585
Registered August 1, 2000

BOYDS COLLECTION, LTD.,**Petitioner,****v.****HERRINGTON & COMPANY, INC.,****Registrant,**

Cancellation No. 32,146

Registration No.: 2,372,585

CERTIFICATE OF MAILING BY EXPRESS MAIL ET835346004US (Express Mailing Label No.)

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" Service under 37 C.F.R. 1.10 on August 20, 2002 and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Michael J. Cherskov
Name of Representative

[Signature]
Signature

August 20, 2002
Date of Signature

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TRADEMARK TRIAL AND
APPEAL BOARD

RESPONSE TO REGISTRANT'S MOTION FOR JUDGEMENT

Petitioner, Boyds Collection, Ltd. (hereafter "Petitioner") hereby responds to registrant, Herrington & Company, Inc. (hereafter "Registrant") motion for judgment under 37 C.F.R. § 2.132(a). In response to Registrant, Petitioner states as follows:

SUMMARY OF FACTS

Petitioner filed the instant cancellation on June 26, 2001.

No discovery was requested in this matter.

Closing of Petitioner's testimony period was scheduled for April 22, 2002.

On April 22, 2002, Petitioner filed a Notice of Reliance with the Trademark Trial and Appeal Board. (Attached as Exhibit 1). The Notice of Reliance satisfied all the formalities of 37 C.F.R. § 1.10 and was deposited as Express Mail on April 22, 2002 during Petitioner's Testimony period. As such, Petitioner's Notice of Reliance was timely filed with the Trademark

Trial and Appeal Board.

Petitioner has no record of receiving a Notice of Reliance from Registrant, due June 21, 2002.

On July 31, 2002, Registrant filed its Motion for Judgment. Upon receipt of that Motion on August 5, 2002, Petitioner realized that it failed to serve Registrant with its Notice of Reliance.¹

ARGUMENT

Petitioner regrets its error of not serving opposing counsel with its Notice of Reliance. The original deadline for Registrant to rebut evidence presented in Petitioner's Notice of Reliance expired August 5, 2002. As such, Petitioner requests that the TTAB provide Registrant with an opportunity to rebut Petitioner's Notice of Reliance, provided herewith as Exhibit 1.

WHEREFORE, Petitioner respectfully requests that the Trademark Trial and Appeal Board deny registrant's Motion for Judgment.

Respectfully submitted,
CHERSKOV & FLAYNIK

By 

Michael J. Cherskov
CHERSKOV & FLAYNIK
The Civic Opera Building
20 N. Wacker Drive
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(312) 621-1330

Dated: August 20, 2002

Attorneys for the Petitioner

¹The originally assigned attorney for Petitioner in this matter, Mr. Lawrence M. Haws, remains absent from the office since the beginning of August due to a serious illness. Otherwise, Petitioner's Notice of Reliance would have been forwarded to Registrant on August 5, 2002. Petitioner can provide a Declaration to the TTAB from Mr. Haws upon his return.


CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2002, I served a copy of the foregoing Petitioner's Response to Registrant's Motion For Judgment upon Registrant Herrington and Company's counsel of record Elizabeth Moreno McArthur, by mailing a true and correct copy thereof via Express Mail having label No. ET835345998US by the United States Postal Service to the following address:

Elizabeth Moreno McArthur, Esq.
SQUIRE SANDERS & DEMPSEY L.L.P.
1 Maritime Plaza, Suite 300
San Francisco, CA 94111

Dated: August 20, 2002

By:



Albert Y. Tsui